



IT IS ORDERED as set forth below:

Date: March 08, 2010

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 09-62040

Anthony Keith Appling,

CHAPTER 7

Debtor.

JUDGE MASSEY

William R. Layng, Jr., Trustee,

Movant,

v.

CONTESTED MATTER

Southern Turf,

Respondent.

ORDER ON OBJECTION TO CLAIM

The Chapter 7 Trustee objects to the claim of Southern Turf on the ground that Respondent having filed as a proof of a fully secured claim, it should look to its collateral for payment. In its proof of claim, Respondent shows that a few days before this case was filed, it obtained a materialman's lien on about 41 acres in Habersham County, Georgia. The relief

sought is disallowance of the claim, which is in the amount of \$9,600. Respondent did not file a response to the objection.

A proof of claim is deemed allowed unless there is an objection. 11 U.S.C. § 502(a). Section 502(b) deals with the disallowance of claims generally. Nothing in section 502(b) permits a bankruptcy court to disallow a claim merely because the creditor has collateral.

The objection makes the point that the funds in the estate came from the cash value of a life insurance policy in which Respondent has no interest, but Respondent claimed no interest in those funds. Thus, the objection's purpose is apparently to obtain a determination that Respondent's claim is not entitled to be paid out of funds in the hands of the trustee. This is an issue under section 726 dealing with distributions to holders of unsecured claims and not under section 502(b) dealing with the disallowance of claims. Section 726 does not provide for a distribution to the holder of a secured claim with respect to that secured claim.

The Court assumes that the Trustee is not asking for a determination of whether the claim is in fact a secured claim under section 506(a)(1) of the Bankruptcy Code. Under that section, "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" 11 U.S.C. § 506(a)(1). A claim that is secured (by a lien on property) for bankruptcy purposes will also be a secured claim under other applicable law, but under section 506(a)(1), a claim that would be deemed a secured claim under other applicable law is not necessarily a secured claim for bankruptcy purposes. The variables are (1) the value of the creditor's interest in (2) property of the bankruptcy estate. If no one seeks a determination under section 506(a)(1), a proof of a fully

secured claim that is not disallowed under section 502 will be treated as an allowed secured claim.

Language and structure thus demonstrate that §§ 502 and 506 should be read in tandem with one another, for they address complementary but different questions. Section 502 deals with the threshold question of whether a claim should be allowed or disallowed. Once the bankruptcy court determines that a claim is allowable, § 506 deals with the entirely different, more narrow question of whether certain types of claims should be considered secured or unsecured.

In re Welzel, 275 F.3d 1308, 1317-1318 (11th Cir. 2001).

The fact that Respondent may have collateral for its fully secured claim is not a basis for disallowing that claim for the reason stated - it is not one of the grounds for disallowance set forth in section 502. The holder of a claim the proof of which is filed as fully secured is not entitled, by reason of that secured claim, to participate in a distribution made pursuant to section 726 to holders of unsecured claims. Based on this analysis, the objection is DENIED, but Respondent does not hold at present an unsecured claim, having filed its claim as fully secured, and is therefore not entitled to participate in a distribution made by the Trustee with respect to unsecured claims.

END OF ORDER